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Goebert Mechanical Corporation and its alter ego John C... Goebert, d/b/a Apex Heating, Cooling and Plumbing, and John C. Goebert, an additional Individual Respondent and Thomas Brown. Case 3-CA-15641

#### January 31, 1996

#### SUPPLEMENTAL DECISION AND ORDER

# BY CHAIRMAN GOULD AND MEMBERS BROWNING AND COHEN

March 22, 1991, the National Labor Relations Board issued a Decision and Order<sup>1</sup> adopting the recommended Order of Administrative Law Judge Raymond P. Green that, among other things, ordered Respondent Goebert Mechanical Corporation (Respondent GMC), its officers, agents, successors, and assigns, to make whole certain of its unit employees for loss of earnings and other benefits resulting from their discharges in violation of the National Labor Relations Act. On November 17, 1993, the United States Court of Appeals for the Second Circuit issued its mandate summarily enforcing the Board's Order.

A controversy having arisen over the amount of backpay due the discriminatees and over the obligations of John C. Goebert, d/b/a Apex Heating, Cooling and Plumbing (Respondent Apex), and of John C. Goebert, an individual (Respondent Goebert), to satisfy the provisions of the Board's Order, on September 29, 1995, the Regional Director for Region 3 issued a compliance specification and notice of hearing alleging the amount due the discriminatees under the Board's Order, and notifying the Respondents that they should file a timely answer complying with the Board's Rules and Regulations. Although properly served with a copy of the compliance specification, the Respondents failed to file an answer.

By letter dated October 25, 1995, counsel for the General Counsel advised Respondent Goebert that no answer to the compliance specification had been received and that unless the Respondents filed an appropriate answer by the close of business on November 1, 1995, summary judgment would be sought. The Respondents filed no answer.

On December 11, 1995, the General Counsel filed a Motion for Summary Judgment with the Board. On December 13, 1995, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondents again filed no response. The allega-

tions in the motion and in the compliance specification are therefore undisputed.

## Ruling on the Motion for Summary Judgment

Section 102.56(a) of the Board's Rules and Regulations provides that a respondent shall file an answer within 21 days from service of a compliance specification. Section 102.56(c) of the Board's Rules and Regulations states:

If the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate.

According to the uncontroverted allegations of the Motion for Summary Judgment, the Respondents, despite having been advised of the filing requirements, have failed to file an answer to the compliance specification. In the absence of good cause for the Respondents' failure to file an answer, we deem the allegations in the compliance specification to be admitted as true, and grant the General Counsel's Motion for Summary Judgment. Accordingly, we conclude that the net backpay due the discriminatees is as stated in the compliance specification and we will order payment by the Respondents of the amounts to the discriminatees, plus interest accrued on the amounts to the date of payment.

#### FINDINGS OF FACT

At all material times, Respondent GMC, a New York corporation, with its office and place of business located at 28-38 Ganson Avenue, Batavia, New York, was engaged in the business of installing and servicing residential and commercial plumbing, heating, and ventilation systems. At all material times, Respondent Goebert was the sole owner and shareholder of GMC.

On June 11, 1991, Respondent Goebert filed a d/b/a certificate with the clerk of Genesee County, at Batavia, New York, thereby creating Respondent Apex. Thereafter, on July 31, 1991, Respondent GMC filed a voluntary petition under Chapter 7 of the United States Bankruptcy Code in the United States Bankruptcy Court for the Western District of New York. The trustee's final report stated that GMC had no assets, and the case was closed on November 27, 1991. GMC was dissolved by proclamation pursuant to New York State Business Corporation Law on about December 28, 1992.

At all times since June 11, 1991, until it ceased business about January 31, 1994, Respondent Apex's office and place of business was located at the same address as Respondent GMC from which it was en-

<sup>&</sup>lt;sup>1</sup> 302 NLRB 185 (1991).

gaged in the same business as GMC, and Respondent Goebert was the sole owner and principal of Apex.

At various times since June 11, 1991, Respondent Apex employed certain employees that were employed by Respondent GMC between May 1990 and June 11, 1991. Since the same date, Apex also made payments to certain of GMC's creditors, in satisfaction of GMC's debts.

During Respondent GMC's existence, Respondent Goebert personally guaranteed certain of GMC's business debts and made personal use of GMC assets, including but not limited to, a 1983 Porsche automobile. In addition, since June 11, 1991, funds of Respondent Apex were used to pay various personal expenses of Goebert.

We find that it is appropriate in these circumstances to hold Respondent Apex jointly and severally responsible for compliance with the Board's Order as enforced based on its continuation of GMC's business as an alter ego, the common ownership of Apex and GMC by Goebert, its identical business purpose and operations with GMC, its assumption of GMC's liabilities, and the substantial continuity of its work force with GMC.

We also find that it is appropriate in the instant circumstances to hold Respondent Goebert jointly and severally responsible for compliance with the Board's Order as enforced based on his primary responsibility for the commission of the unfair labor practices of Respondent GMC, his status as sole shareholder and principal of GMC and sole proprietor of GMC's alter ego, Apex, his personal use of corporate assets and accounts of GMC and Apex, and his personal guarantee of certain business debts of GMC.

## **ORDER**

The National Labor Relations Board orders that the Respondents, Goebert Mechanical Corporation and its alter ego, John C. Goebert, d/b/a Apex Heating, Cooling and Plumbing, and John C. Goebert, an additional individual Respondent, Batavia, New York, their officers, agents, successors, and assigns, shall make whole the individuals named below, by paying them the amounts following their names, with interest to be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), minus tax withholdings required by Federal and state laws:

Thomas Brown	\$ 2,432
James Carter	15,404
Dennis Long	02

Dated, Washington, D.C. January 31, 1996

William B. Gould IV,	Chairman
Margaret A. Browning,	Member
Charles I. Cohen,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

<sup>&</sup>lt;sup>2</sup> As set forth in the compliance specification, Dennis Long is not entitled to any backpay inasmuch as his interim earnings exceeded the gross backpay amount owing to him.